

ESTATE OF EDWARD Q. BOYER : Order Affirming Modification Order
:
: Docket No. IBIA 94-9
:
: March 14, 1994

Appellant Devon Owl Boyer seeks review of a September 8, 1993 order affirming modification order issued by Administrative Law Judge Robert A. Yetman in the estate of Edward Q. Boyer (decedent), IP RC 324Z 90-93. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that order.

Decedent, Fort Hall Allottee 920, died on December 28, 1989. Administrative Law Judge Keith L. Burrowes held a hearing to probate decedent's trust or restricted estate on June 11, 1991. A will executed by decedent on May 31, 1979, was presented for probate. As relevant to this decision, that will devised all of decedent's interest in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, T. 3 S., R. 35 E., Boise Meridian, Bingham County, Idaho, to appellant, who was decedent's natural grandson and adopted son. The will further devised the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of the same section to decedent's wife, Olive B. Boyer.

The inventory of decedent's trust or restricted interests, prepared by the Realty Officer of the Fort Hall Agency, BIA, on November 8, 1990, showed that decedent owned a 1/1 interest in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, of sec. 17, containing 12.5 acres, at the time of his death.

An order approving decedent's will was issued by Administrative Law Judge Elmer T. Nitzschke on December 16, 1991. Following the land descriptions set forth in the will, Judge Nitzschke's order indicated that Olive received decedent's interest in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, and appellant received his interest in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of the same section.

Apparently some problem, which is not reflected in the probate record, resulted from the description of the property devised to appellant. On February 3, 1993, Administrative Law Judge Vernon J. Rausch issued a modification order in decedent's estate. The order stated that, because of a property sale entered into by decedent during his lifetime, the interest which passed to appellant was the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, containing 2.5 acres.

Appellant objected to the modification order. By order dated May 18, 1993, Judge Yetman ordered the Portland Area Office, BIA, to substantiate the sale of decedent's interest in the remainder of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of section 17. The Area Director responded by providing the following documents:

A June 4, 1982, Application for Partitionment of Allotment 921, seeking to partition Addison Devinney's interest in 20 acres contained in that allotment into 7.5 acres.

A July 27, 1982, Application for Partitionment of Allotment 921, seeking to partition decedent's interest in 20 acres contained in that allotment into 12.5 acres.

A November 1982 survey of the NE $\frac{1}{4}$ of sec. 17 for partitionment.

An August 23, 1983, Grantor's Agreement to Land Exchange, signed by Devinney, agreeing to exchange his interest in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, containing 7.5 acres, to decedent for land of approximately equal value. The agreement showed the appraised value of Devinney's interest to be \$25,000.

An August 23, 1983, Deed to Restricted Indian Land, in which Devinney conveyed to decedent a $\frac{3}{8}$ interest in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, containing 12.5 acres. The consideration was stated to be an exchange of land of approximately equal value.

A June 1, 1984, Grantor's Agreement to Land Exchange, signed by decedent, agreeing to exchange decedent's interest in the N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, containing 7.5 acres, to Devinney for land of approximately equal value. The agreement showed the appraised value of decedent's interest to be \$15,000.

A June 1, 1984, Deed to Restricted Indian Land, in which decedent conveyed to Devinney a $\frac{5}{8}$ interest in the N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, of sec. 17, containing 7.5 acres. The consideration was stated to be an exchange of land of approximately equal value.

The result of these land exchanges was that decedent owned 1/1 interest in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, containing 10 acres, and 1/1 interest in the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, containing 2.5 acres, and Devinney owned a 1/1 interest in the N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the N $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, containing 7.5 acres. The interests shown above were reflected in the inventory of decedent's trust or restricted property prepared by BIA at the time of his death. Under decedent's will, the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17 was devised to Olive, and the only remaining interest decedent held in the NE $\frac{1}{4}$ of sec. 17 was his 1/1 interest in the S $\frac{1}{2}$ S $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, which passed to appellant. This is the description of the property passing to appellant set forth in both Judge Rausch's February 3, 1993, order and Judge Yetman's September 8, 1993, order.

Appellant objects to the modification order and argues that decedent was the sole heir to Allotment 921 and that in 1930 decedent built a house on this allotment through a reimbursable loan program which required that

decedent own the property completely. Appellant states that the records showing that decedent was the sole owner of this allotment were lost by the Fort Hall Agency, and Devinney was shown as owning a 3/8 interest in the E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17. Appellant further argues that decedent intended to and did convey other land he owned, separate and apart from the E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, to Devinney in exchange for Devinney's interest in that section, but that this intent was not properly carried out by BIA. Appellant acknowledges that decedent's house was on the SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, which was devised to Olive, but states that it would make no sense for decedent to convey his interest in any part of the E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17 to Devinney, when decedent had built his house on this tract, and decedent and his family had lived there for 60 years.

Although appellant clearly believes that he is entitled to the whole of the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17, he has presented no documentary evidence to support his claim. BIA's records show a land exchange involving this tract between decedent and Devinney, and the inventory of decedent's trust or restricted property prepared at the time of decedent's death reflected this exchange. Appellant's belief that decedent did not intend to make this particular exchange does not fulfill his burden of proving that the modification order is erroneous. Estate of Thomas Sun Goes Slow, 23 IBIA 99, 100 (1992), and cases cited therein. 1/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the September 8, 1993, order affirming modification order issued by Judge Yetman is affirmed.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge

1/ Appellant states that he has received lease income from the entire acreage in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ of sec. 17 since decedent's death. If appellant has received income from the entire 10 acres, this may have been the impetus for the modification order. However, such erroneous distribution would not grant him title to the property.